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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/587,318	06/05/2000	Kiril A. Pandelisev	PHOENIX	8159

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EXAMINER

KHAN, OMAR A

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 01/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/587,318	PANDELISEV, KIRIL A.
	Examiner	Art Unit
	Omar A Khan	3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 05 June 2000.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-41 and 84-105 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-41 and 84-105 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 11/14/2002 have been fully considered but they are not persuasive.

Browner discloses a base (element 11), cells on the base (elements 1-10), controls connected to the cells separately controlling application of power to each cell individually columns 2 and 3 lines 72 and 1, respectively, where the specification discloses "a plurality of adjusting knobs (31) for the regulation of...cooperating pairs of the conductors". Russek discloses a remote control in Figure 13 and a belt, which serves as base capable of encircling a limb in Figures 1 and 3.

In response to applicant's argument that Browner, Russek, Ostrow, Alon, or McLoed are not healing apparatuses, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Browner, Russek, Ostrow, Alon, or McLoed all provide therapeutic treatment of the human body and are thus, healing apparatuses.

Further, the recitation "a healing apparatus" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a

structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Applicant is reminded that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to Applicant's arguments regarding the Election/Restriction requirement made in Paper No. 3, the Election/Restriction was deemed proper and made final in Paper No. 6.

*Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-7, 84, 87, 89, 93-95, 97, and 99-104 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Browner (US Patent No 3,025,857).

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-8, 16, 26-35, 39, 84-105 are rejected under 35 U.S.C. 103(a) as being unpatentable over Russek (US Patent No 4,381,012) in view of Alon (US Patent No 4,690,146).  
Russek clearly discloses all of the claimed limitations but does not explicitly speak to batteries being connected to the self-contained controls and communicating individually with each of the plurality of cells. Alon teaches a neuromuscular stimulating/healing apparatus with power supplies operatively connected to the self-contained controls within each cell and individually communicating with each of the plurality of cells allowing for asynchronous stimulation, increasing the portability of the device, providing adequate power for sustained time periods. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the electrode healing device of Russek to include batteries being connected to the self-contained controls and communicating individually with each of the plurality of cells as taught by Alon allowing for asynchronous stimulation, increasing the portability of the device, and providing adequate power for sustained time periods.

4. Claims 1-4, 7-15 and 26-39, 84-104 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrow (US Patent No 5,344,384) in view of Alon (US Patent No 4,690,146).  
Ostrow discloses all of the claimed limitations but does not speak explicitly to separate controls connected individually to each of the cells. Alon teaches a neuromuscular stimulation/healing

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device with separate controls for each of the plurality of stimulating cells for allowing asynchronous or differential stimulation of the treatment site. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the magnetotherapy healing apparatus of Ostrow to include controls separately controlling application of power to each of the cells, as taught by Alon, for allowing asynchronous or differential stimulation at the treatment site.

5. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrow (US Patent No 5,344,384) in view of Alon (US Patent No 4,690,146) further in view of Russek (US Patent No 4,381,012). Ostrow, in view of Alon, discloses all of the claimed limitations but does not explicitly speak to the power source mounted or connected to the base. Russek teaches an electrode placement and treatment device with a battery power source mounted and connected to the base for increasing the portability of the device. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the magnetotherapy healing device of Ostrow, in view of Alon, to mount or connect the power supply or battery on the case, as taught by Russek, to allow for increased portability of the device.

6. Claims 16-25 and 105 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrow (US Patent No 5,344,384) in view of Alon (US Patent No 4,690,146) further in view of Russek (US Patent No 4,381,012). Ostrow, in view of Alon, discloses all of the claimed limitations but does not explicitly speak to remote control of the magnetotherapy healing device. Russek teaches an electrode placement and treatment device with remote control of the device for increasing the portability of the device and allowing for more convenient and easy control by a patient who has limited movement. It would have been obvious to one of ordinary skill in the

art at the time the invention was made to modify the magnetotherapy healing device of Ostrow, in view of Alon, to include remote control of the device, as taught by Russek, for increasing the portability of the device and allowing for more convenient and easy control by a patient who has limited movement.

7. Claims 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrow (US Patent No 5,344,384) in view of Alon (US Patent No 4,690,146) further in view of McLeod (US Patent No 5,518,496). Ostrow, in view of Alon, discloses all of the claimed limitations but does not speak explicitly to a sensor for measuring a parameter of the wounds being treated. McLeod teaches a magnetic healing device with a magnetic field sensor for measuring the resultant magnetic field and ensuring a uniform field in the predetermined space or treatment area. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the magnetotherapy healing apparatus of Ostrow, in view of Alon, to include a sensor for measuring a parameter of the wounds being treated, as taught by McLeod, for measuring the resultant magnetic field and ensuring a uniform field in the predetermined space or treatment area.

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Omar A Khan whose telephone number is (703) 308-0959. The examiner can normally be reached on M-F 9AM-6PM.

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0873.

Omar A Khan  
January 23, 2003

1/23/03

*Omar A. Khan*

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